PRIVILEGED COMMUNICATIONS—RIGHT OF ATTORNEY TO COMMEMT UPON FAILURE TO CALL FAMILY PHYSICIAN—CITY OF WARSAW v. FISHER, 55 N. E. 42 (Ind.).—*Held*, that in an action for damages resulting from personal injuries, counsel for defendant may properly comment upon plaintiff's failure to call as a witness his attending physician. See COMMENT, p. 171.

PUNITIVE DAMAGES—KNOXVILLE TRACTION CO. v. LANE ET UX., 53 S. W. 557 (Tenn.).—Where plaintiff, while a passenger on defendants' street car, was insulted by motorman. *Held*, that the jury might find exemplary damages, although the company did not authorize nor ratify the act and was innocent of any negligence.

There are two rules for the liability of a corporation in exemplary damages for the acts of its servants. The prevailing one holds the corporation liable where the servant or agent would be liable to such damages. *Goddard* v. *Railway Co.*, 57 Me. 202. The other requires the corporation to ratify or authorize the act. *Hale on Damages*, p. 219; *Turner* v. *R. Co.*, 34 Cal. 594.

The Supreme Court of Tennessee in this case insists that the true reason for allowing such damages is solely the breach of the contractual relation between plaintiff and the company. The rule seems severe, as it demands nothing more nor less of a corporation than supernatural foresight in selection of employés.

RAILROADS—ASSUMPTION OF RISKS—CONTRIBUTORY NEGLIGENCE — YOUNG ET AL v. SYRACUSE, B. & N. Y. R. R. Co., 61 N. Y., Supp. 202.—A switch was so placed that it could be seen only 60 feet away. The engineer who ran into the switch when open had been on the road about fourteen years, knew of the position of the switch and the company rule that it should be approached with great care. *Held*, whether engineer assumed risk of employment or was guilty of negligence was a question for the jury. Smith, J., dissenting.

This is a close case on the point of what a court is to consider a matter of law and what it is to leave to a jury. We take it that the principles on which this case is decided are well settled; that the rule in *Pautzer* v. *Tilly Foster Mining Co.*, 99 N. Y. 368, 2 N. E 24, as to a workman's presupposing his master to have provided safe appliances, is modified by an employé's knowing of an obvious defect, making no objection and continuing in employment. *Krog* v. *Chicago*, 32 Iowa 357. But the defect must be obvious and of such a kind that the injured person could have kept its dangerous character in mind without an effort.

STREET RAILROADS—CONTRIBUTORY NEGLIGENCE—BRAINARD v. NASSAU ELECTRIC R. R. Co., 61 N. Y. Sup. 74.—A man who surrenders his seat on a crowded street car to a woman and stands on the running board of the car, is not, as a matter of law, negligent. Riding on the running board of a crowded street car is not *per se* negligence.

Both of the points decided are somewhat novel in character. Surrendering one's seat to another passenger does not constitute contribuory negligence as a matter of law. Such question is usually one of fact and depends upon the circumstances. *Lehr* v. *R. R. Co.*, 118 N. Y. 556, 23 N. E. 889; *Still* v. *R. R. Co.*, 52 N. Y. Sup. 975. In the present case the surrender was made to a woman who may be presumed to have been weaker than the deceased. The words of Hatch, J., are worthy of note: "Custom, even at Coney Island, has not deadened all sense of courtesy, and if it had, we should continue to think that the law of negligence has still a sufficient respect for the amenities of life as not *per se* to charge as negligence the surrender of a seat by a man to a woman."

SUITS AGAINST PUBLIC OFFICERS FOR OFFICIAL MISCONDUCT—LAW GIVING RIGHT TO BE INDEMNIFIED BY MUNICIPALITY UNCONSTITUTIONAL—IN RE JEN-